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(12,058.)

Supreme Court of the United States.

OCTOBER TERM, 1901.

The City of Covington, Ky., et al.,
Appellants,

No. 255.] *vs.*

The First National Bank of Covington, Ky.,
Appellee.

Appeal from the Circuit Court of the United States from the District of Kentucky.

MOTION TO ADVANCE.

F. J. HANLON, *City Solicitor,*
HARVEY MYERS,
W. H. JULIAN,
Solicitors for Appellants.

JAMES W. BRYAN,
Solicitor for Appellee.

(18,056.)

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Appellants,

No. 255.] *vs.*

The First National Bank of Covington, Ky.,
Appellee.

Appeal from the Circuit Court of the United States from the District of Kentucky.

MOTION TO ADVANCE.

The appellants, City of Covington, *et al.*, and also the appellee, The First National Bank of Covington, Kentucky, now come and move the Court, that the above styled cause be advanced for hearing at as early a date as may be convenient and proper under the rules of Court.

The matter involved in the said case is the City *ad valorem* taxes for the years 1893 to 1904, inclusive. The right of the City to collect said taxes is claimed by the City under and by virtue of its charter (charter of cities of the second class in Kentucky) and a certain Act of the Kentucky Legislature approved on March 21, 1900, which Act is as follows:

An Act relating to the taxation of the shares of stock of national banks.

WHEREAS, The Supreme Court of the United States has lately decided that article three (3) chapter one hundred and three (103) of the acts of eighteen hundred and ninety-one, eighteen hundred and ninety-two, eighteen hundred and ninety-three is void and of no effect in so far as the same provides for the taxation of the franchise of national banks, in consequence of which decision there is not now and has not been since adoption of said article in eighteen hundred and ninety-two, any adequate mode of taxing national banks, while State banks are now, and have been ever since eighteen hundred and ninety-two, taxable for all purposes, State and local; therefore:

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Taxing shares of national bank stock.

SECTION 1. "That the shares of stock in each national bank in this State shall be subject to taxation for all State purposes, and shall be subject to taxation for the purposes of each county, city, town and taxing district in which the bank is located.

Manner of listing.

SEC. 2. For purposes of the taxation provided for by the next preceding section, it shall be the duty of the president and the cashier of the bank to list the said shares of stock with the assessing officers authorized to assess real estate for taxation, and the bank shall be and remain liable to the State, county, city, town and district for the taxes upon said shares of stock.

When shares have not been listed since revenue law of 1892.

SEC. 3. When any of said shares of stock have not been listed for taxation for any of said purposes under levy or levies of any year or years since the adoption of the revenue law of eighteen hundred and ninety-two, it shall be the duty of the president and cashier to list the same for

Where franchise tax has been paid.

taxation under said levy or levies; *Provided*, That where any national bank has heretofore, for any year or years paid taxes upon its franchise as provided in article three (3) of the revenue law of eighteen hundred and ninety-two, said bank shall be excepted from the operation of this section as to said year or years. *And provided further*, That where any national bank has heretofore, for any year or years, paid State taxes under the Hewitt bill in excess of the State taxes required by this act for the same year or years, said bank shall be entitled to credit by said excess upon its State taxes required by this act.

Where paid under Hewitt bill.

A[illegible]ments entered and reported as real estate is entered and reported.

SEC. 4. All assessments of shares of stock contemplated by this act shall be entered upon the assessor's books, certified and reported by the assessing officers as assessments of real estate are entered, certified and reported, and the same shall be certified to the proper collecting officers for collection as assessments of real estate are certified for collection of taxes thereon.

Assessments; how enforced.

SEC. 5. The assessments of said shares of stock and collection of taxes thereon, as contemplated by this act, may be enforced as assessments of real estate and collection of taxes thereon may be enforced.

Purpose of Act.

SEC. 6. The purpose of this act is to place national banks of this State, with respect to taxation, upon the same footing as State banks as nearly as may be consistently with said article three (3) of the revenue law and said decision of the Supreme Court.

Emergency clause.

SEC. 7. WHEREAS, It is important that State banks and national banks should be taxed equally for all purposes, an emergency exists, and this act shall take effect and be in force from and after its passage."

Approved March 21, 1900.

Payment of said taxes is resisted by the appellee, Bank, upon five grounds:

First: That under a contract between it and the Commonwealth of Kentucky, it, the appellee Bank, and its shares of stock, are exempt from taxation by appellant, City, until 17th November, 1904.

Second: That by reason of a judgment of the Campbell Circuit Court (Kentucky), and one by the Court of Appeals of Kentucky in 1894 and 1895, respectively, in a suit between appellant, City of Covington, and appellee, Bank, the appellant City is estopped to deny the existence of such contract so exempting appellee Bank and its shares of stock.

Third: That appellee Bank, and its shares of stock, are exempt from taxation by appellant City, until 17th November, 1904, is *res judicata*.

Fourth: That said Act of 21st March, 1900, is as to appellee, invalid, illegal and void, an impairment of the obligations of its said contract with the State of Kentucky, and taking of the private property of the Bank and its shareholders for public use, without due process of law, and without just compensation, and an abridgment of its privileges and immunities, and a denial to it of the equal protection of the laws, and in violation of Sec. 10, Article I, and of Articles V and XIV of the Amendments to the Constitution of the United States.

Fifth: That said Act is in conflict with and repugnant to the provisions of Sec. 5219 of the Revised Statutes of the United States.

The reason for this application is that the matters involved herein are of great public interest and concern to the public and taxpayers of Kentucky. Both parties hereto are desirous that the law as to taxation of this

National Bank be speedily settled, and pray this Honorable Court that this case be advanced and heard at as early a date as may be convenient and proper, under the rules of Court.

F. J. HANLON, *City Solicitor*,
HARVEY MYERS,
W. H. JULIAN,
Solicitors for Appellants.

JAMES W. BRYAN,
Solicitor for Appellee.